# United States Department of Labor
# Employees' Compensation Appeals Board

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| **E.M., Appellant** | ) | |
| **and** | ) | **Docket No. 09-39** |
| | ) | **Issued: March 3, 2009** |
| **U.S. POSTAL SERVICE, POST OFFICE, New Castle, PA, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

### ***JURISDICTION***

On October 8, 2008 appellant filed a timely appeal from a February 6, 2008 merit decision of the Office of Workers' Compensation Programs, denying his claim for disability compensation and a September 25, 2008 nonmerit decision, denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2 and 501.3(c), the Board has jurisdiction over the merits of the case and over the September 25, 2008 nonmerit decision.

### ***ISSUES***

The issues are: (1) whether the Office properly denied appellant's claim for compensation from September 6, 2003 to January 11, 2004 following its termination of his compensation for refusal of suitable work; and (2) whether the Office properly denied his request for further merit review of his claim under section 8128.

### ***FACTUAL HISTORY***

This case is before the Board for the second time. By decision dated November 29, 2004, the Board affirmed September 5 and November 13, 2003 Office decisions terminating

appellant's compensation effective September 5, 2003 on the grounds that he refused an offer of suitable work under 5 U.S.C. § 8106.[1] The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

On September 6, 2007 appellant filed a claim for compensation on account of disability (Form CA-7) requesting compensation for lost wages from September 1, 2003 to January 11, 2004. He related that he lost pay because his physician did not release him to return to work until January 12, 2004.

By decision dated February 6, 2008, the Office denied appellant's claim for compensation from September 1, 2003 to January 11, 2004 due to his accepted work injury. It found that he was not entitled to compensation as it had terminated his compensation for refusing suitable work under section 8106 of the Federal Employees' Compensation Act. The Office noted that appellant received compensation through September 6, 2003.

On September 4, 2008 appellant requested reconsideration of the February 6, 2008 decision. He enclosed medical evidence supporting that he was disabled for the period in question and factual verification that he was off work from September 1, 2003 to January 11, 2004.

By decision dated September 25, 2008, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant and thus insufficient to reopen his case for further review of the merits under section 8128.

## ***LEGAL PRECEDENT -- ISSUE 1***

The Office's regulations provide that, after termination of compensation under section 8106(c) of the Act,[2] a claimant has no further entitlement to compensation under sections 8105, 8106 and 8107[3] of the Act.[4] However, the claimant remains entitled to medical benefits as provided by 5 U.S.C. § 8103.[5] Section 8106(c) serves as a penalty provision, barring an employee's future entitlement to compensation for the same injury based on a refusal to accept a suitable offer of employment.[6]

[1] Docket No. 04-358 (issued November 29, 2004). The Office accepted that on February 6, 2002 appellant, then a 53-year-old distribution clerk, sustained low back strain lifting and throwing bundles of mail. It placed him on the periodic rolls effective June 16, 2002. The Office terminated appellant's compensation effective September 5, 2003 on the grounds that he refused an offer of suitable work. Appellant subsequently accepted a job offer on March 24, 2004.

[2] 5 U.S.C. §§ 8101-8193.

[3] 5 U.S.C. §§ 8105, 8106, 8107.

[4] 20 C.F.R. § 10.517(b).

[5] *Id*.

[6] *See Joan F. Burke*, 54 ECAB 406 (2003).

Office procedures provide:

> "If the claimant does not accept the job, the claims examiner should prepare a formal decision which provides full findings of facts as to why claimant's reasons for refusing the job are deemed unacceptable and terminate compensation under section 8106(c)(2) of the Act as of the end of the roll period. Such a decision should not be modified even if the claimant's medical condition later deteriorates and he or she claims a recurrence of total disability.[7]

## ***ANALYSIS -- ISSUE 1***

The Office accepted that appellant sustained low back strain due to a February 6, 2002 employment injury. By decision dated November 29, 2004, the Board affirmed the Office's termination of his compensation effective September 5, 2003 for refusing suitable work. On September 6, 2007 appellant filed a claim for compensation from September 1, 2003 to January 11, 2004 due to his February 6, 2002 work injury.[8] By decision dated February 6, 2008, the Office denied his claim after finding that he was not entitled to compensation due to his refusal of suitable work.

The Office properly found that its September 5, 2003 decision terminating appellant's compensation for refusing suitable work served as a bar to any subsequent monetary compensation as a result of the February 6, 2002 work injury. Section 8106(c) of the Act provides that an employee who refuses suitable work is not entitled to further compensation for total disability or permanent impairment.[9] As the Office terminated appellant's compensation due to his refusal of suitable work and the Board affirmed the termination, he is barred from future entitlement to wage-loss compensation for his 2002 employment injury.[10] Appellant's claim for disability compensation is, therefore, precluded by section 8106(c).[11]

## ***LEGAL PRECEDENT -- ISSUE 2***

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[12] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not

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[7] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5(d)(1) (July 1997).

[8] The Office paid appellant compensation until September 5, 2003.

[9] 5 U.S.C. § 8106(c); *see also* 20 C.F.R. § 10.517(a).

[10] 20 C.F.R. § 10.517.

[11] *Id*; *see Merlind K. Cannon*, 46 ECAB 517 (1995).

[12] 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application."

previously considered by the Office.[13] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[14] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[15]

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[16] The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[17] While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.[18]

## ***ANALYSIS -- ISSUE 2***

By decision dated February 6, 2008, the Office denied appellant's claim for wage-loss compensation from September 6, 2003 to January 11, 2004 after finding that he was barred from receiving compensation as he refused suitable work. On September 4, 2008 appellant requested reconsideration. He submitted a May 19, 2008 medical report addressing his ability to work from September 1, 2003 to January 11, 2004 and a leave analysis showing that he did not work during that period. The pertinent issue, however, is whether appellant is entitled to compensation subsequent to the Office's termination of his compensation for refusing suitable work under section 8106 of the Act. The medical evidence and leave analysis are not relevant to the particular issue involved and thus do not warrant a reopening of the case for merit review.[19]

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit new and relevant evidence not previously considered. As he did not meet any of the necessary regulatory requirements, he is not entitled to further merit review.

## ***CONCLUSION***

The Board finds that the Office properly denied appellant's claim for compensation for wage loss from September 6, 2003 to January 11, 2004 after he refused suitable work. The

[13] 20 C.F.R. § 10.606(b)(2).

[14] *Id*. at § 10.607(a).

[15] *Id*. at § 10.608(b).

[16] *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

[17] *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

[18] *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

[19] *Freddie Mosley*, 54 ECAB 255 (2002).

Board further finds that the Office properly denied his request for further merit review of his claim under section 8128.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated September 25 and February 6, 2008 are affirmed.

Issued: March 3, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board